IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.175 OF 1997

The State of Maharashtra — Appellant (orig.Complainant)

vs.

1. Krishna M. Tare,
2. Manohar A. Manera,
3. Gopinath M. Tare,
4. Bhagwan M. Tare,
5. Vasant M. Tare,
6. Ashok G. Tare,
7. Kabir Balu Tare,
8. Hanumant R. Daki,
9. Kaluram Ganpat Tare,
10. Gulam Gajanan Tare,
11. Bama Balu Tare
12. Santosh Dukolya Raut

(Anjurgaon, Tal.Bhiwandi
Dist. Thane).

13. Kabir A. Bhagat,
Age 229 years,
R/o. Bharodi, Dist.Thane. — Respondents (Orig.Accused.)

Mrs.A.S.Pai, APP for State.

Mr.A.P.Mundargi, Senior Counsel with Mr.K.S.Patil for the respondents.

ALONG WITH
CRIMINAL REVISION APPLICATION NO.158 OF 1996

Gajanan Baliram Patil
Adult, R/o.Anjur Village,
Taluka Bhiwandi, Dist:Thane — Applicant (Orig.complainant)

vs.

1. Krishna M. Tare,
2. Manohar A. Manera,
3. Gopinath M. Tare,
4. Bhagwan M. Tare,
5. Vasant M. Tare,
6. Ashok G. Tare,
7. Kabir Balu Tare,
8. Hanumant R. Daki,

9. Kaluram Ganpat Tare,
10.Gulam Gajanan Tare,
11.Bama Balu Tare
12.Santosh Dukolya Raut

(Anjurgaon, Tal.Bhiwandi
Dist. Thane).

13. Kabir A. Bhagat,
Age 229 years,
R/o. Bharodi, Dist.Thane. Respondents

(Nos. 1 to 13 - Orig.Accused.)

14. State of Maharashtra

Mr.S.V.Kotwal for the applicant.

Mrs.A.S.Pai, APP for State.

Mr.A.P.Mundargi, Senior Counsel with Mr.K.S.Patil for
the respondents 1 to 13.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATE OF RESERVING JUDGMENT : 18th January, 2007

DATE OF PRONOUNCING JUGMENT: 08th February, 2007

ORAL JUDGMENT (Per Anoop V. Mohta,J.).

This is an appeal against acquittal filed by the State. By the impugned judgement Accused nos.1 to 11 were acquitted for the offences punishable under Sections 147, 148, 149 read with Sections 302 and 34 of Indian Penal Code (IPC) and also Accused No.12 under Section 201 read with Section 34 of IPC.

2. The prosecution case is that on 24.12.1993 at about 7.30 p.m. the deceased Janardan was proceeding towards the house from the S.T.stand of village Anjur along with

daughter, aged 4 years. The complainant (Gajanan) alleged to have witnessed that the deceased, Janardan, was running towards his house and Accused nos. 1 to 11 were chasing him armed with weapons like swords and choppers. When Janardan reached in the courtyard of the complainant, he fell in the courtyard and immediately thereafter Accused nos. 1 to 11 assaulted with the weapons. The complainant rushed to rescue the deceased. However, in the meanwhile his sister Sunita (PW 2) also rushed to the spot and about to fall on the body of Janardan to save him. But Accused no.1-Krishna Tare snatched and threw her away and as threatened with sword the complainant ran towards his house. The family members of the deceased including his niece, wife, mother, aunt came there and also witnessed the incident of assault by these Accused persons. The Accused fled away from the spot after showering stones on the house of the complainant. The complainant and his family members went near the deceased and found that he had received bleeding injuries on his head, hand, ears, forehead and was lying in the pool of blood. The complainant, Madhukar Tare (PW 3), Vishwanath Gharat, Mahadeo Gharat, Prakash Baliram Patil, Bhalchandra Rangnath Tare and others lifted the Accused. The deceased was taken in the tempo of one Ganesh, to the hospital of Dr.Saptnekar in Thane town. He succumbed to the injuries in the said hospital before 9 p.m.

3. On the same night, Senior PI of Narpoli Police Station, Bhiwandi, received a wireless message that at Anjur village, Accused No,.1 Krishna Tare and Accused-Manohar Tare had opened fire. The injured Janardan (the deceased) was admitted in the Civil Hospital, Thane. The police machinery moved accordingly. The scene of offence was, in front of the Grampanchayat office, the courtyard of the complainant-PW 1. DCP Dhange, recorded the statement of complainant (Ex.48). The statement was sent to Narpoli Police Station for registration of the crime. The complaint (Ex. 48) was received from the Police Station after registration of the crime vide C.R.No.I-125/1993. The inquest panchanama was drawn and the case papers from Dr.Saptnekar's hospital were collected.

4. On 25.12.1993 PI Laxman Bhosale, went to the scene of offence at 7.30 p.m. and drew its panchanama (Exh.24) in the presence of complainant and two panchas. He also recorded the statement of 13 witnesses including PW 2 and PW 3. The Accused were arrested.

5. On 2.1.1994, based on Accused no.1's statement before PI Bhosale in the presence of panchas, that he had given the weapons to Accused no.12 Santosh, a memorandum of the statement was prepared (Exh.56), but

nothing was recovered from the house of Accused no.12. However, Accused no.12 led towards the bank of creek and produced three swords and two choppers from the heap of hay.(Exh.56-A).

6. The prosecution thereafter sent the documents and collected the information including, the post-mortem report, CA report etc.

7. All the accused were chargesheeted. They denied the charges. The prosecution in all examined eight witnesses. PW 1 Gajanan Baliram Patil is the complainant and an eye-witness of the incident. PW 2 Sunita d/o. Baliram Patil is the real sister of PW 1 Gajanan and claiming to be an eye-witness of the incident. PW 3 Madhukar Jagannath Tare had rushed to the scene of offence immediately after the incident and helped in shifting the deceased to the hospital. He also went to the police station Narpoli, at about 8.00 p.m. on the same night and gave the information to the police that Accused no.1 Krishna Tare and Accused no.2 Manohar Manera and others had fired and injured the deceased. The concerned police of Narpoli Police Station took entry of this information in the station diary at Sr.No.39 at 8.00 p.m. and proceeded to record the statement of Janardan at Thane. PW 4 Sonya Kalu Gharat, is the panch witness, who was present at the

time of inspection of scene of offence and preparation of its panchanama by the I.O. PW 5 Jagdeo Mhatre is an another panch witnesses in whose presence Accused no.1 Krishna made statement that he had given the weapons to Accused no.12 Santosh and he would produce the same. PW 6 Dr. Bhausaheb Kempipatil is the Medical Officer who performed post-mortem examination on the dead body of Janardan. PW 7 PI Laxman Bhosale, is the Investigating Officer. PW 8 PC Jondhale is the constable who served the summons on Dr.Chandrakant Vyavahre in Sapatnekar Hospital, Thane, but as not found, submitted the report accordingly at Exh.67.

8. The prosecution placed on record various material documents, which were not disputed by the defence in response to the report by APP under Section 294 of the Code of Criminal Procedure.

9. After hearing both the sides, the learned Sessions Judge held that the deceased Janardan met with homicidal death. However, the prosecution failed to prove that Accused nos. 1 to 11 formed an unlawful assembly and with common object of the assembly committed murder of the deceased; they were armed with deadly weapon; in furtherance of their common intention committed the murder. It is further held that the prosecution failed to prove that Accused nos.12 and 13 in furtherance of

their common intention caused certain evidence of offence of murder of the deceased to disappear with intention of screening themselves and Accused nos.1 to 11 from legal punishment. Therefore, based on above, the learned Sessions Judge has acquitted all the Accused. Therefore the present State Appeal.

10. Considering the following principle of law in the case of **Kallu alias Masih & ors. v. State of M.P., (2006) 3 SCC (Cri) 546** in cases like this in an appeal against acquittal, we are of the view that there is no case made out to interfere with the reasoning given by the learned Sessions Judge while acquitting the Accused.

> "8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgement of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

11. After going through the record along with the learned Advocate appearing for the parties, we are of the view that the view as taken is reasonable and

plausible. As there are various doubts created in view of the lacuna to connect all the Accused with the crime in question. We also find that there is no case made out of perversity in passing the reasoned order of acquittal. The learned Sessions Judge has rightly appreciated the evidence and came to a correct conclusion of acquittal. We also, after re-appreciating the evidence and material placed on record, find that the order of acquittal is correct basically on the following reasonings:

(i) There is a sufficient material on record to show that the complainant, PW 1 and PW 2 are on enmical terms with the Accused. PW 1 and PW 2 were the Accused in criminal cases concerning the murder of Accused no.1's father. The deceased was relative of PW 1 and PW 2 who are brother and sister. The learned Sessions Judge therefore was right in observing that:

> (a) "Admittedly, P.W. 1 Gajanan is real brother of P.W. 2 Sunita they reside jointly Minute perusal of complaint Exh. 48 smells that there are two party fractions in the village Anjur and the deceased as well as P.W. 1 Gajanan were members of one party while accused Nos. 1 to 11 were the members of opposite party. Not only this, but there was

enmity between these two groups since prior to this incident;"

(b) "In his cross-examination Para 12, complainant P.W. 1 Gajanan has admitted that he and deceased Janardan Tare were co-accused in murder case of one Manga Tare however, he does not remember who were other accused persons in that case;"

(c) "It is also pertinent to note that the complaint Exh. 48 shows that the near relatives of deceased Janardan i.e. his mother Parvati, wife Manish aunt Baymabai niece Jotsna arrived on the spot while the accused were giving assault to Janardan and they also witnessed this incident. So, it was but natural that one of them must have filed the complaint being close relative of deceased Janardan, but instead of that, complainant Gajanan came forward and filed the complaint;"

(d) "So, one fails to understand, how Gajanan preferred the open court yard to take bath at evening time in winter season. If the theory of taking bath by Gajanan, is accepted, the presence of Gajanan becomes very doubtful,

because he must be taking bath in another house just adjacent to the scene of offence and he might have come out after the incident is over and the assailants have fled away;" and

(e) "Even the presence of PW 2 on the spot, at 7.30 p.m. also raises various doubts as observed. She went out to collect her clothes from the road which was tied in the court yard. She stated that the said rope was intact in the court yard when the spot panchanama was drawn. The spot panchanama of scene of offence (Exh. 54) however nowhere refers to the existence of the said rope. It is further supported by PW 4-panch witness. There is nothing further to connect that PW 1 saw PW 2 or vice versa at 7.30 p.m. before the incident. No-one stated in their respective evidence the presence of each other before the incident."

(ii) After analysing the whole evidence PW 1 and PW 2, as doubts were created in the prosecution case in reference to the presence of these two witnesses and, therefore, after considering their enemical terms with the Accused, we are inclined to accept the reasoning given by the learned Sessions Judge.

(iii) As noted by the learned Sessions Judge that as per the statement of PW 1 the deceased was already injured when he fell in the court-yard and therefore it appears that the deceased was assaulted already before he fell down in the court-yard. The statement that Accused 1 to 11 started giving blows one after another is also raises doubt specifically for want of details of individual's roles played by the respective Accused.

(iv) We have also noted that in the complaint/FIR which was lodged/registered, except a general and vague statement that all the Accused were assaulting the deceased, there is no reference made to the individual or specific role played by Accused nos.1 to 11. The statement that all the Accused who were with swords/weapons were assaulting the deceased is quite vague. Admittedly, only five weapons were recovered out of that only three were blood stained. As per CA report (Ex. 33) the group of blood found on these weapons was inconclusive. There is no other material to connect the independent role played by the Accused while attacking the deceased, as there is no material to connect which Accused was in possession of which weapon at the relevant time, in winter season at 7.30 p.m. Specially in view of the background that in the FIR/complaint it was reported that there was firing in which the deceased was killed. The Station Diary Entry 65 mentions about

firing by Accused Nos.1 & 2 as referred. Admittedly, there is no material or case made out by the prosecution or even by the complainant PW 1 or PW 2 or any other witness that there was such firing at the relevant time on the spot. This basic incident resulted into the death of the deceased itself raises various doubts in the case.

(v) The FIR was not lodged by the close relative of the deceased, but by PW 1-Gajanan, after 2 & 1/2 hours of the incident, who at the relevant time at about 7.30 p.m. in the winter season, after bath at night, when standing in his courtyard saw the said incident. PW 2-Sunita, sister of Gajanan also rushed on the spot as observed, fell on the person of the deceased to save him. Admittedly, there were no blood stains found on the clothes of PW 1 or PW 2. In fact those clothes were not seized by the prosecution for the related purpose. The complaint was lodged at about 9.30 p.m. not by the family members of the deceased like his mother, wife, niece and aunt who came to the spot immediately after the alleged incident.

(vi) PW 1 after having witnessed such incident did not inform anybody in the house or outside, about the incident. PW 2-Sunita also not communicated the incident or even the presence of Gajanan to anybody

except in her statement by the police officer of next date. The presence of PW 2 Sunita on the spot at 7.30 p.m. also, for want of connecting material and explanation, is also doubtful.

(vii) The other persons who lifted the deceased in the tempo were also not examined. Dr.Saptnekar in whose hospital the deceased was hospitalised and succumbed to his injury also no way connect the Accused with the crime.

(viii) The injuries were serious. There was pool of blood according to the prosecution. PW 1 or PW 2 or other persons who were present were without any blood stains on their cloths. There were no injuries on their persons. No blood stained clothes were seized. PW 1 stated that he lifted Janardan for shifting him towards S.T.stand and hospital, but in the cross-examination stated that he did not touch Janardan while he was being taken towards S.T.stand. He further stated in his complaint (Exh. 48) that his sister Sunita PW 2 fell on the person of the deceased but no clothes of the Sunita were seized. The complainant changed the version by saying that she was about to fall but Accused no.1 snatched her and threatened PW 1, Gajanan also ran away from the spot. All these improvements have been rightly recorded by the learned Sessions Judge as it creates the

doubt even the presence of the witness at the time of actual incident, specially when except PW 1 and PW 2, having enmity with Accused's family, no other witnesses connected the presence of Gajanan or Sunita on the spot at the time of actual assault, as claimed to be witnessed by PW 1 and PW 2.

(ix) The learned Sessions Judge has also recorded various contradictions, improvements and discrepancies as recorded in paragraphs 34 to 38 of the judgment.

(x) The learned Sessions Judge has further rightly observed that not only the evidence of these eye-witnesses is doubtful but also giving of information by PW 1 to the police also brings their testimony in doubt as recorded in paragraphs 45 to 47 of the judgment.

(xi) The spot panchanama of skull bones is also in no way connect the Accused with the crime, as the human blood group, was also found to be inconclusive, including the bunch of hair. The learned Sessions Judge has rightly observed that the bones found on the spot of offence was not proved to be of human bones and specially of the deceased.

(xii) The learned Sessions Judge was right in observing

that the material eye-witnesses were not examined by the prosecution specially the close relatives of the deceased who reached to the spot immediately after the incident as recorded in paragraphs 50 to 55. The adverse inference as drawn therefore cannot be said to be incorrect in view of the facts and circumstances of the case.

(xiii) In this background and in totality, the learned Judge was right in observing that the prosecution failed to prove the guilt beyond doubt and therefore rightly acquitted the Accused.

(xiv) The prosecution case in so far as Accused no.12 is concerned, in view of the above background and what is observed in para 57 is also rightly considered and rejected and passed order of acquittal, as the said discovery is also not helpful to the prosecution to connect all the Accused persons with the guilt. In absence of material to connect individual role of the Accused 1 to 11, it is not possible to convict all the Accused. The order of acquittal is correct.

(xv) The prosecution failed to prove any offence against Accused no.12 as there is no iota of evidence against Accused no.13 and therefore both Accused have been rightly acquitted.

12. As the testimony of the prosecution witnesses is doubtful in nature, giving room for possible views, the testimony of the prosecution witnesses, in the facts and circumstances of the case, rightly disbelieved. The view as taken cannot be said to be unreasonable or perverse. There is no case made out to interfere with the order of acquittal passed by the learned Sessions Judge. Taking all this into account, we see no merit in the appeal. The appeal is therefore dismissed. The Bail Bonds of the Accused shall stand cancelled.

13. In view of above reasoning the Criminal Revision Application No.158 of 1996 is also rejected.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]